

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10307 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SOMABHAI PUNJABHAI PATEL  
AND OTHERS

Versus

HEIRS OF DECEASED PARSOTTAMDASDESAIBHAI  
AND OTHERS

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Appearance:

MR JITENDRA M PATEL for Petitioners  
MR AJ PATEL for Respondent No. 2  
SERVED BY DS for Respondent No. 3

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 28/02/96.

ORAL JUDGEMENT

It is really very, unfortunate, that a quarter century old dispute is yet awaiting verdict and pending in long legal conduit-pipe.

The petitioners have questioned legality and validity of

the judgment and order passed by the Gujarat Revenue Tribunal, Ahmedabad in a revision application No.TEN.B.A.359/94, on 10/11/1995, rejecting the revision application and confirming the order of two authorities below.

The dispute revolves round agricultural property bearing survey no. 191 admeasuring about 4 Acres and 14 Gunthas situated at village Vadola of District Kheda. There is a chequered history. It would not be necessary to address entire history. But a few relevant and necessary facts for deciding the merits of this petition may be setout at the outset.

- 1) Aforesaid disputed land originally belonged to one Kantibhai Hiralal Joshi who died on 7/1/1975 leaving behind his wife Narmadaben.
- 2) Widow Narmadaben has executed a registered Will dt.6/10/1975 in favour of petitioners nos.1 and 3.
- 3) Widow Narmadaben expired on 1/11/1975. With the result, the petitioners became the owners as legatees by virtue of the will of Narmadaben. Necessary Probate Order was also obtained by the petitioners under the Indian Successions Act from the competent court on 22nd of January, 1985.
- 4) Names of the petitioners came to be entered in the revenue record by mutation Entry No.1398 on 23rd of November, 1989.
- 5) Concerned Mamlatdar and Agricultural Land Tribunal initiated thereafter suo motu proceedings under section 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948 (the 'Act' for short) and registered the case bearing Case No.25 of 1978.
- 6) The Mamlatdar recorded the order in the said case on 16th of June, 1989. The concerned Mamlatdar simultaneously decided all the references by common order in Suits Nos. 178 of 1976 and 179 of 1976. Three appeal were filed against the common order of the Mamlatdar before the Deputy Collector. The Deputy Collector decided all the three appeals wherein the appeals filed by the present petitioners came to be dismissed and two appeals preferred by the respondents came to be allowed. In short, it was held that the present

contesting respondents are the tenants and entitled to possession.

- 7) The petitioners preferred three revision applications before the Gujarat Revenue Tribunal against the orders of the Deputy Collector in three different tenancy appeals, on 16th of June, 1989.
- 8) The petitioners lost before the Tribunal. Therefore, they filed Special Civil Applications Nos. 1774 of 1988 and 1858 of 1988 before this court. In common order, this court partly allowed the said petitions by an order dt. 23rd of April, 1990. This court remanded the matters to the Gujarat Revenue Tribunal raising three points for examination and adjudication.
- 9) The Tribunal, after remand, decided against the petitioners and confirmed the orders passed by the Deputy Collector in Tenancy Appeals. Upon the direction of this court, the parties as a special case, were also permitted to lead evidence before the Tribunal in a revision. The evidence was led before the Tribunal and after hearing considering the evidence on record, the Tribunal reached to the conclusion that the petitioners are not entitled to possession and held that the respondents are the tenants and they are entitled to possession and occupation of the disputed land under section 32(1B) of the Act. The Tribunal also directed the Mamlatdar to take further action in accordance with law.
- 10) It appears from the record that, Mamlatdar issued show cause notice and pursuant to that, the petitioners appeared. The petitioners went on claiming adjournment after adjournment on different occasions and the court of Mamlatdar granted time on various occasions. Lastly upon the objection being raised by the otherside, request for adjournment of the case was rejected and matter was decided on merits.

Being aggrieved by the order of the Mamlatdar, the petitioners challenged the said order before the Deputy Collector by filing an appeal under section 74 of the Act which came to be dismissed which was further carried by way of a revision before the Tribunal which also came to be rejected. The Tribunal dismissed the revision on 10/11/1995 preferred by the petitioners against the order

of Deputy Collector dt. 13/4/1994. Hence this petition under Articles 226 and 227 of the Constitution of India.

Needless to reiterate the scope and ambit of the jurisdictional sweep of this court under Articles 226 and 227 of the Constitution of India, factual investigation is not permissible. Not only that, reassessment and reappraisal of the evidence on facts is also beyond the scope in a writ petition. Unless and until illegality, manifest perversity resulting into injustice or misreading of evidence is successfully spelt out or pointed out, this court would be at loath to interfere with the finding of facts recorded by the court or authorities below. It must also be made clear that what could be complained of with the aids of Articles 226 and 227 is a decision making process and not decision itself. In a case like one on hand, the court is required to consider as to whether any illegality or any perversity or misreading of evidence is apparent or not. In the absence of any such feature or facet, the court has no option but to reject the petition, as this court is not an appellate authority, much less, it is only a court acting as supervisory custodian.

With this background of the scope and ambit of Articles 226 and 227 of the Constitution of India, the facts and circumstances emerging from the record of the present case do not warrant interference of this court exercising extraordinary, special plenary, prerogative, equitable writ jurisdiction and grant relief thereunder which are very well explained, expanded, and expounded under Articles 226 and 227 of the Constitution of India.

The authorities below have concurrently and consistently and coherently held that heirs of deceased Parmar Desaibhai are also the tenants in respect of disputed land and they are entitled to possession. Material conditions providing eligibility for claiming right under section 32F(1)(b) of the Act are found to have been satisfied from the record as rightly observed by the Tribunal in its last order. The following four conditions are required to be established so as to claim right under section 32F(1)(b) of the Act and the Tribunal has in clear and unambiguous term observed that all the four conditions are established. Section provides as under:-

32F.(1) Notwithstanding anything contained in the preceding sections,-

(a) where the landlord is a minor, or a widow, or a

person subject to any mental or physical disability, the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31:

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if atleast one member of the joint family is outside the categories mentioned in this sub-section, unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion;

(b) where the tenant is a minor, or a widow or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of clause (a), the right to purchase land under section 32 may be exercised:-

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;

(iv) within one year from the date on which the tenant ceases to be serving member of the armed forces.

The only grievance which could appeal prima facie to the conscious is that the Mamlatdar granted adjournments to the petitioners and finally rejected his application, without giving him an opportunity of being heard. This submission is raised by learned counsel for the petitioners. The copies of proceedings produced at Annexure 'L' clearly go to show that more than 25 times adjournment was granted upon the request of the petitioners' advocate. Right from 4th February, 1993 upto 18th January, 1994, despite opposition from otherside, adjournments came to be granted at the

instance either of the petitioner or his advocate. It, therefore, can not be contended even for a moment that opportunity of hearing is not afforded to the petitioners by the Mamlatdar and A.L.T., after the proceedings started before that court pursuant to the direction of the Tribunal. It is true that the proceedings recorded on 18/1/1994 is not happily drafted and even it is partly not legible but that by itself would not constitute sufficient and appropriate grounds for the exercise of an extraordinary power under Articles 226 and 227 of the Constitution of India.

The respondents are held to be tenants of the disputed land long before. The parties have travelled through a long legal conduit pipes. A person who is found to be a tenant in respect of disputed land under benevolent provisions of the Act has been kept away from the fruits and enjoyment of the property over spell of quarter century. In the situation like one on hand, a person can not be said to have not been heard, merely because the proceedings were not fully recorded or even for that purpose it cannot be gainsaid that sufficient opportunity was given by the Mamlatdar (without entering into at this stage the controversy whether such proceedings were required). There is, therefore, no proper case to exercise powers under Articles 226 and 227 of the Constitution of India.

In reality, it appears from the record that under the provisions of Sec. 73(2) of the Act, the Mamlatdar was required to get the possession and hand it over to the respondents pursuant to the direction of the Tribunal, as the point about right under section 32(1B) was concluded. However, it appears that Mamlatdar issued show cause notice. One thing is quite certain that this is a case wherein rightful person is deprived of all legal fruits for long spell of quarter century and therefore, the petitioners even if there is some small infraction in recording of proceedings or in refusing adjournment, would not become eligible or qualify to invoke aids of Articles 226 and 227 of the Constitution of India. On the contrary, it appears that the petitioners have tried to abuse and misuse process of law on several occasions. Therefore this is fit case to award exemplary cost, while dismissing the petition at threshold at the admission stage and considering the records made available at the time of hearing by the learned counsels for the parties, The impugned order of the Gujarat Revenue Tribunal, confirming three consistent orders of the authorities below, is fully justified and requires no interference

at all. Therefore this petition is, totally, meritless and is required to be rejected at the threshold. Accordingly it is rejected with cost which is quantified at Rs.3,500/-.

The learned counsel for the petitioner Mr Patel at this stage states that the interim relief may be continued for a further period of three months. This submission is strongly opposed by the learned counsel appearing for the respondents. Having regard to the facts and the circumstances of the case, it is directed that the interim relief shall remain operative for a further period of two months from today, so as to enable the petitioner to persue further legal remedy.

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